



1000 Vermont Avenue NW
Suite 1100
Washington, DC 20005
T 202 296 8800
F 202 296 8822
environmentalintegrity.org

September 25, 2020

Via FOIAonline submission

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

**RE: Freedom of Information Act request for Records Related to Stack Tests
Required by 40 C.F.R. Part 60, Subpart Ja and Consent Decree (N.D.
Indiana Civil No. 2:12-CV-00207) at BP Products North America Inc.'s
Whiting Refinery.**

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the Environmental Integrity Project ("EIP") hereby requests the following records held by the U.S. Environmental Protection Agency ("EPA").

Background

BP Products North America, Inc. ("BP") owns and operates the Whiting Refinery, located at 2815 Indianapolis Boulevard, in the City of Whiting, Lake County, Indiana 46394. Many of the units at the refinery—including the refinery's fluidized catalytic cracking units 500 and 600 ("FCU 500" and "FCU 600")—are subject to pollution control operating and reporting requirements under 40 C.F.R. Part 60, Subpart Ja and the terms of the consent decree entered in N.D. Indiana Civil No. 2:12-CV-00207, on November 6, 2012 between EPA, the Indiana Department of Environmental Management, citizen-intervenors (including EIP), and BP.

Under the terms of the Consent Decree, each FCU is explicitly subject to and must comply with all requirements of 40 C.F.R. Part 60, Subpart Ja. Consent Decree at ¶ 17. These include (1) the requirement to comply with a numeric emission limit of 1.0 pounds per 1000 pounds of coke burned for non-sulfate particulate matter at each FCU, 40 C.F.R. § 60.102a(b)(1), and (2) the requirement to demonstrate compliance with this limit through a stack test that must be performed at each FCU at least once annually. Consent Decree at ¶ 17. The Consent Decree requires BP to report any stack tests conducted concurrently to both EPA and citizen-intervenors (including EIP). Consent Decree at ¶ 101. No such stack tests have been reported to EIP in 2020, and the most recent stack tests that have been reported to EIP were conducted on June 4, 2019 at FCU 500, and June 11, 2019 at FCU 600.

The Consent Decree also requires BP to limit emissions of particulate matter measuring less than 10 micrometers in diameter ("PM₁₀") to no more than 0.9 pound of PM₁₀ per 1,000

pounds of coke burned at FCU 500, and no more than 0.7 pounds of PM₁₀ per 1,000 pounds of coke burned at FCU 600. Consent Decree at ¶ 18. BP performed stack tests to demonstrate compliance with the PM₁₀ limit at FCU 500 on June 5 and June 30, 2020, and a stack test to demonstrate compliance with the PM₁₀ limit at FCU 600 on June 9-10, 2020, which were provided to EPA and EIP as required.

Records Requested

Please provide:

1. Any copies of stack tests performed in 2020 and reported to EPA for the purpose of demonstrating compliance with its Subpart Ja non-sulfate PM limits at FCUs 500 and 600, as well as any records, including communications with BP, representatives of BP, or any other third parties, related to any such stack tests that may have been performed or scheduled to be performed. If no such stack tests were reported to EPA in 2020, please state so in your response.
2. All records, including communications with BP, representatives of BP, or any other third parties, relating to the June 5 and June 30, 2020 PM₁₀ stack tests at FCU 500 and the June 9-10, 2020 PM₁₀ stack test at FCU 600.

For the purposes of this request, the term “communications” means any correspondence (handwritten, typed, or electronic) including but not limited to emails, letters, memoranda, and notes of phone calls or other dialogue and any attachments to such correspondence. The term “third party” means any person who is not an employee of the federal government.

Claims of Exemption from Disclosure

If you regard any documents as exempt from required disclosure under FOIA, please exercise your discretion to disclose them nevertheless, keeping in mind that FOIA “is the most prominent expression of a profound national commitment to ensuring an open Government” and that “[a]ll agencies should adopt a presumption in favor of disclosure.” President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies: Freedom of Information Act, 74 Fed. Reg. 4, 863 (Jan. 26, 2009). Should you elect to invoke an exemption, please provide the required full or partial denial letter and sufficient information to determine whether or not there may be grounds to appeal EPA’s decision. In accordance with the minimum requirements and regulations of due process, this information should include:

- Basic factual material, including the originator, date, length, and addresses of the withheld items; and
- Explanations and justifications for denial, including the identification of the exemption applicable to the withheld information or portions of the information found to be subject to exemption, and how each exemption applies to the withheld material.

Additionally, should you elect to invoke an exemption for a record, please provide all reasonably non-exempt portions of such record that are not specifically exempted from disclosure.

Waiving Request for Fee Waiver

This FOIA request meets the case-by-case requirements for a fee waiver, by satisfying each of the six factors which must be met to qualify for a fee waiver under EPA regulations found at 40 C.F.R. § 2.107. However, although we are entitled to a fee waiver, we are waiving any request for a waiver of fees. If EPA estimates that the costs of completing this request will exceed \$100, please contact me with the estimated costs at your earliest convenience.

Opportunity to Provide Clarification

If I can provide any additional information or answer any questions that can help to clarify or limit this request, please do not hesitate to contact me at (202) 263-4441 or via email at slee@environmentalintegrity.org.

Thank you for your assistance with this FOIA request. I appreciate your prompt attention to this matter, and I look forward to hearing from you.

Sincerely,

/s/ Sanghyun Lee
Sanghyun Lee
Attorney
Environmental Integrity Project
1000 Vermont Avenue NW
Suite 1100
Washington, DC 20005
(202) 263-4441
SLee@environmentalintegrity.org.